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until the last trumpet shall summon him, and them, to appear before the "grand assize of the universe."

One of the newspapers published in Salem said :

"In the death of Col. Logan the community loses a valuable citizen, the bar an honorable member, and his family a kind and indulgent husband and father. . . . As a friend he was staunch and true, and in all his relations he was the soul of honor and fidelity."

The other Salem newspaper said :

"He was one of the foremost men of this section, and his life's record is one of much usefulness and a gratification to all who knew him. . . . In his death the community has lost one of its most useful and helping members, but we trust that his influence for good will go on indefinitely."

In his life we see patriotism, which sacrificed self and place for country ; manliness, which chose hard labor rather than dependence ; pluck and diligence, which, without the aid of fortune or influence, mastered a difficult profession, and acquired a practice which earned for his family a comfortable home and a generous living ; courage, which commanded respect ; honesty of purpose and action, which merited and received confidence ; charity, which endeared him to his neighbors ; and a Christian faith, which was an ornament in life and a stronghold in death. In these things he is worthy of emulation by all.

To the memory of a brave soldier, a patriotic citizen, an honorable lawyer, a helper of the needy, a loving husband and father, and a true friend, I tender this poor tribute, regretting the lack of ability to make it a more worthy one.

ARCHER A. PHLEGAR.

Christiansburg, Va.

STATUTORY NOTICE OF A GENERAL MEETING OF STOCKHOLDERS.

Section 1114 of the Virginia Code reads as follows:

"When and How a General Meeting Called.—A general meeting of stockholders may be held at any time, upon the call of the board of directors, or of stockholders holding together one-tenth of the capital stock, upon their giving notice of the time and place for such meeting, for thirty days, in a newspaper published in or near the place at which the last annual meeting was held."

What is the meaning of the phrase "for thirty days" in this statute? Does it mean daily for thirty days? Does it mean one inser-

tion thirty days prior to the meeting? Does it mean any number of insertions you please to make?

This statute has not been construed by the Court of Appeals, and there is a wide difference of opinion amongst lawyers as to the meaning of the phrase above quoted.

It is certain that the *statuté*, whatever it means, must be strictly followed or else it is no meeting as to the absent shareholders, and it is highly probable that a failure to observe its requirements would invalidate the entire proceedings of the meeting.¹

The construction of a statute requiring notice is always in favor of the person to be notified.²

There must be thirty clear days' notice of the meeting, exclusive of the date thereof, but the first day's notice may be counted.³

Ordinarily, process and notice cannot be served on Sunday;⁴ and it has been held that publication of legal notice on Sunday is without effect.⁵ But under the decision of the Court of Appeals in *Bowles v. Brauer*⁶ it is probable that the intervening Sundays would be counted.⁷

*Scammon v. City of Chicago*⁸ was a proceeding to condemn certain lots in the city of Chicago for failure to pay a special assessment levied upon them for the purpose of paving a portion of Wabash Avenue. The charter of the city directed that in these proceedings "notice shall be given by said commissioners, *by six days' publication* in the corporation newspaper, of the filing of such assessment roll in the clerk's office; and that, at the next regular meeting of the common council, to be held after the expiration of such publication, they will apply to the common council for a confirmation of said assessment." (Italics mine.)

Held—That this language required a publication on six different days, exclusive of Sunday.

*Leffler v. Armstrong*⁹ was a proceeding to be allowed to redeem land sold under mortgage, which required trustees to sell, etc., "first giving

¹ See *Cook on Corp.*, sec. 596; *Beach Priv. Corp.*, secs. 273, 281; *Barton's Law Pr.* 1262.

² *Hill v. Faison*, 27 Tex. 428.

³ See Va. Code, sec. 5, cl. 8.

⁴ Va. Code, sec. 898.

⁵ *Scammon v. Chicago*, 40 Ill. 146; *Shaw v. Dodge*, 5 N. H. 462.

⁶ 89 Va. 466.

⁷ See *Easton v. Chamberlin*, 3 How. Pr. 412; *Hanover Fire Ins. Co. v. Shrader*, 89 Tex. 35; *Merritt v. Bank*, 100 Ga. 147; *English v. Dickey*, 128 Ind. 174.

⁸ 40 Ill. 146 (1866).

⁹ 4 Iowa, 482 (1857).

thirty days public notice of the time, place and terms of said sale, and of the property to be sold, by advertisement in some newspaper printed in Burlington, Iowa Territory." (Italics mine.) There was no daily paper published in Burlington, but there was a weekly paper, in which the trustees advertised April 8, 15, 22, 29, and May 6; the sale was made May 8, 1847.

Held—That the notice was sufficient, and the sale valid. The court said, p. 487-8:

"The publication was made regularly every week; there was no omission. The notice, as we have before substantially said, was circulating, and being published to the public and the world in legal contemplation, as much and effectively on each day, hour and minute after one publication, and before the succeeding one, as it was at the instant of time when the paper was issued and delivered to its readers. *And yet it will not do to hold that one publication, thirty days prior to the sale, would be sufficient; for the language used, as well as reason and good sense, would dictate a continuous or successive publication, in those modes of repetition which the subject-matter would allow.*" (Italics mine.)

*Washington v. Bassett*¹ was a proceeding to redeem land sold under a mortgage, because the requirement of the mortgage "first giving *twenty days' notice* of such sale in some one of the public newspapers printed in the said city of Providence" had not been complied with. The notice was published in a daily newspaper printed in Providence, seven times, viz., July 22, 25, 29, August 1, 5, 8, and 11. The sale took place August 12. The court said, p. 625:

"The question is, whether such a publication of the notice satisfied the requirement of the power. We do not think it does. The evident purpose of the requirement is to secure ample notice of the sale, for the mutual advantage of the mortgagor and mortgagee. The mortgagee is allowed to select the newspaper in which he will give the notice, but the extent of the notice is definitely expressed. It must be 'twenty days' notice.' We think the fair and natural interpretation of that phrase is that the notice is to be *continuous*, in the paper selected, *for twenty days*. The defendants contend that, inasmuch as the notice covered a period of twenty days, it was 'twenty days' notice.' But if seven insertions in a daily paper, covering the time, is to be held equivalent to twenty days' notice, why would not two, say on the first and last days of a period of twenty days, or even one, twenty days before the sale? If anything less than a continuous notice is sufficient, we do not see why one or the other of these would not also be sufficient. The defendants say that even this complies with the literal construction of the terms of the power, but that is not enough if the construction be crafty or technical. Such powers should be construed as people generally, who have to do with them, would be likely to understand them, and we think the use of the word 'days' would suggest to the ordinary mind a continuous daily notice, if it be in a daily paper."

¹ R. I. (1887), 10 Atl. Rep. 625.

And again, p. 626:

"The cases proceed upon the principle that, where the period is a certain number of weeks, such a notice is continuous from week to week, which is all that is required. Upon the same principle we must conclude that, where the period is a certain number of days, the notice must be continued from day to day, upon such days as the paper is published. Of course the selection of the paper must be made in good faith, but if as in *Leffler v. Armstrong* (*supra*), it be properly made in a weekly or semi-weekly paper continuously and in every issue, for the designated period, the requirement is fulfilled."

In *Stine v. Wilkeson*,¹ the court said (p. 95-6):

"Was the notice given in this case, by the trustee, of the intended sale of the property to satisfy the debt intended to be secured by the deed of trust sufficient? In default of payment as stipulated in the deed, the trustee was to proceed to sell said land and premises at public auction for cash to the highest bidder, at the courthouse in St. Louis, first having given *twenty days previous* notice of the time and place and terms of sale, and property to be sold, by advertisement in some newspaper printed in the city of St. Louis."

Publication was made in the *Evening Gazette* on March 11th, and then it was transferred and published in the *Atlas* on the 14th, 21st and 28th of March. The sale took place April 1st. Counsel for Stine contended that one publication of the notice would satisfy the requirement of the deed, and that one having been made in due time in the *Gazette*, the after notices in the *Atlas* might be rejected. The court said, p. 96:

"The language used in the deed is substantially the same as that used in our statute directing how a sheriff shall give notice of a sale of real estate under an execution. Would one publication of a notice by a sheriff of an intended sale of real estate under execution, made in a newspaper twenty days before the day of sale, be held to be a compliance with the requisition of the statute, which directs him to give twenty days' previous notice of the time, etc., by advertisement in some newspaper printed in the county, etc.? We apprehend that such is not the general understanding, nor the practice in the country, but that such notices are continued to be published until the day of sale."

In *Weld v. Rees*,² the provision of the mortgage was that the trustee might sell the property "after publishing a notice in a newspaper published in the city of Chicago, ten days *before* the day of such sale." The first insertion of the notice was in a daily paper, published twelve days before the day of sale, excluding the latter day, and in each daily paper during the time, but no papers were issued on the intervening Mondays. *Held*—That the requirements of the law were observed,

¹ 10 Mo. 75.

² 48 Ill. 428.

and there was the required notice—distinguishing *Scammon v. City of Chicago*.¹ The court said, p. 432:

“It is urged in affirmance of the decree, that the notice of the time and place of the sale was insufficient, as there were not ten papers containing the notice issued, without including those issued on one of the Sundays, but there were twelve days, excluding the day on which the sale was made, after the first insertion. It will be observed that the language does not, in terms, require notice to be published by ten daily insertions, or a notice *for ten days*, the first insertion being ten days before the sale. If it had, then there might be some question as to its sufficiency.”

McCurdy v. Baker,² was a sale of real estate under execution, the statute requiring “public notice of the time and place of sale, *for at least thirty days* before the day of sale, by advertisement in some newspaper.” The court, speaking through Brewer, J. (now of the Supreme Court of the United States), said (p. 113):

“The preposition ‘for,’ as used in the language quoted, requires, it seems to us, an insertion in *each successive issue of the paper* up to the day of sale, the first one being more than thirty days prior thereto.”

The meeting provided for by our statute is not a stated meeting of which all of the shareholders have notice from the charter or by-laws, but it is a special meeting, called by the directors or holders of one-tenth of the capital stock, for the purpose of considering some important and pressing business which, presumably, cannot await the next stated meeting. It is the right and duty of each shareholder to attend all formal meetings of shareholders, and to hear all and deliberate upon questions affecting his interests. In order to do so, it is necessary that he be given reasonable notice of the time and place of the meeting. Where the statute prescribes the notice, that notice must be given, and the greater the frequency with which notice of the meeting is published, the greater is the probability that the shareholder will learn of the meeting. The notice under this statute is not a merely formal thing, but its object is to perform the important function of getting the shareholders together. If there is no daily paper at the place of meeting, a semi-weekly, or weekly, or monthly may be used. The law will not require the performance of an impossibility, and if the paper be selected in good faith, and there are as many insertions of the notice as there are issues of the paper within the time, the statute will have been complied with.

The shareholder is entitled to a fair interpretation of the language

¹ *Supra*.

² 11 Kan. 110.

of the statute, and the following definitions of the word "for" would seem to lead to the requirement of a continuous advertisement of the notice throughout the thirty days :

"For: Indicating the space or time through which an action or state extends; hence, during; in or through the space or time of."¹

"For: To the extent or number of; to the amount of; during the time of."²

Hence if the definitions of the preposition "for," as given by these authorities, be substituted in the statute in its place, the language would read: "through the space of thirty days," or, "to the extent or number of thirty days," or, "during the time of thirty days."

Therefore, it appears—

1st. That the statute will be construed favorably to the absent shareholder.

2d. That thirty clear days' notice of the meeting must be given, by publication of the time and place thereof as frequently and continuously as the circumstances of the locality will permit.

3d. That in computing the thirty days during which the notice is to be published, the first day of the notice, and probably the intervening Sundays, may be counted, but the day of the meeting should not be.

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DOES POSSESSION BAR THE RIGHT TO BRING EJECTMENT IN VIRGINIA?

Since about the year 1455 ejectment has been the mode by which adverse claimants have tested the validity of their respective titles to land, and, as the nature of the action was possessory, it could, at common law, only be maintained by a plaintiff *out of possession*, against a defendant *in possession*; and hence if one out of possession, claimed title to land under an apparently valid deed, or other instrument, and did not choose to assert his title in an action of ejectment, the real owner, who was in possession, had no remedy at law by which he could protect himself against the depreciation in the value of his title. Hence the origin and source of the equitable jurisdiction to remove a cloud from the plaintiff's legal title, is founded in the fact that he, being in possession, could not maintain an action of ejectment; and it

¹ Webster's International Dictionary (Porter's edition).

² Standard Dictionary.